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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,094	11/04/2003	David C. Huseman	UP-309	4404

7590 05/21/2004

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EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/701,094	HUSEMAN, DAVID C.	
	Examiner	Art Unit	
	Jes F. Pascua	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03/19/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2 and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by French Patent No. 2 291 106 to Metral.

The single slits adjacent each side edge in Metral meets applicant's recitation of "tear sections" to the degree that applicant's specification does not exclude single slits as being "tear sections". The line of perforations between the slits of Metral meet applicant's recitation of a "bag support section" since the strength per unit length of the Metral line of perforations would be greater than the strength per unit length of the slits.

3. Claims 1, 2, 3 and 7 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Membrino '661.

The single slits adjacent each side edge and in the middle of the Membrino '661 bag meets applicant's recitation of "tear sections" to the degree that applicant's specification does not exclude single slits as being "tear sections". The nips 30, 32

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between the slits of Membrino '661 meet applicant's recitation of a "bag support section" since the strength per unit length of the Membrino '661 nips would be greater than the strength per unit length of the slits.

4. Claims 1, 2 and 7 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by DeSmedt.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metral, Membrino '661 or DeSmedt.

Metral, Membrino '661 and DeSmedt each disclose the claimed invention, as discussed above, except for front and back walls having complementary detachably attachable zipper profiles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the front and back walls of Metral, Membrino '661 or DeSmedt with complementary detachably attachable zipper profiles since it was known in the art that complementary detachably attachable zipper profiles on the front and back walls of bags permit selective opening and closing of the bag.

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7. Claims 5, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metral, Membrino '661 or DeSmedt.

Metral, Membrino '661 and DeSmedt each disclose the claimed invention, as discussed above, except for at least one of the front and back walls having a plurality of holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least one of the front and back walls of Metral, Membrino '661 or DeSmedt with a plurality of holes since it was known in the art that a plurality of holes in at least one of the front and back bag walls permits venting of the bag interior.

8. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metral, Membrino '661 or DeSmedt.

Metral, Membrino '661 and DeSmedt each disclose the claimed invention except for the front and back walls having a gusset formed therebetween. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a gusset between the front and back walls of Metral, Membrino '661 or DeSmedt since it was known in the art that gussets formed between front and rear bag walls increase the volumetric capacity of the bag.

### ***Conclusion***


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP